

blocked from being considered because the administration and two Republican Senators have chosen to put holds on legislation rather than debate the bill and cast a vote.

Today there is an article in the Miami Herald that says, "...[there aren't] any objections to having the Kerry-Bond bill come to the floor for a debate as long as the Administration's and the Small Business Administration's concerns were aired." That implies that we haven't given them a chance to express their concerns and to work with us to pass this bill, when we have.

We went to great efforts to work with SBA, Senator KYL and his staff, and the administration. This has gone on long enough. I have not placed a hold on non-judicial nominees in haste. I do it because I have no alternative. Small businesses need assistance, the administration's approach isn't adequate to meet the needs of those businesses, and Senator BOND and I have a sensible approach to reach them. I ask my colleagues to lift their holds on the bill, let us debate the bill, and let us vote.

Mr. President, I ask unanimous consent that a copy of my letter to Senator DASCHLE be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, December 12, 2001.

Hon. TOM DASCHLE,  
Majority Leader, United States Senate, Washington, DC.

DEAR MR. LEADER: As you know, Senator Bond and I have introduced and are trying to gain Senate passage of S. 1499, the "American Small Business Emergency Relief and Recovery Act of 2001." This legislation, supported by 63 Senators, would provide emergency and immediate financial assistance to small businesses around the country who are suffering tremendous financial loss following the terrorist attacks of September 11, 2001. More specifically, the bill would leverage \$860 million in federal dollars to make available \$25 billion in loans and venture capital to ailing small businesses. The bill has widespread support in the business community, and is endorsed by 36 groups concerned with the financial health of small businesses including the US Chamber of Commerce, the National League of Cities, the US Conference of Mayors and the National Restaurant Association.

Despite the widespread and bipartisan support for this legislation, Senator Kyl continues to block its consideration by the Senate. Yesterday, Senator Kyl noted his concerns are based in large part on objections raised by the Administration. Senator Bond and I have attempted to negotiate with Senator Kyl and the Administration so that an agreement could be reached to move this legislation. However, it has become increasingly clear that Senator Kyl and the Administration are not interested in negotiating our differences. Rather, they are interested in delaying consideration of this important relief interminably—"running out the legislative clock" at the expense of the thousands of small businesses who are finding it more and more difficult to keep their doors open

without the relief they so desperately need in these difficult economic times.

For this reason, and regrettably, I have come to the conclusion that, having tried to negotiate in good faith, my only remaining option is to demonstrate, conclusively, that under no circumstances will we back away from our commitment to small businesses. To bring Sen. Kyl and the Administration back to the negotiating table in earnest, I would like to place a hold on all non-judicial executive nominations that may come before the Senate. It is my hope that this hold will be short-lived, as it will lead to more serious negotiations and ultimately Senate consideration of S. 1499. However, I am prepared to keep this hold in place until the Senate considers our bill. A simple yes or no vote on this important relief for small businesses is not too much to ask, and I hope that our Republican colleagues in the Senate will at long last allow us the opportunity to make good on our promise to help struggling businesses nationwide.

Thank you for your prompt attention to this matter.

Sincerely,

JOHN F. KERRY.

#### THE USA PATRIOT ACT OF 2001

Mr. BENNETT. Madam President, I rise to offer some guidance to the Secretary of the Treasury on the regulatory authority assigned to him by the Congress with the recent enactment of H.R. 3162, "The Patriot Act of 2001."

As a member of the Senate Banking Committee, I authored an amendment to that legislation's anti-money laundering title, title III, the "International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001," which was included in the final legislation as signed by the President at Sec. 311. My amendment directs the Secretary of the Treasury to promulgate regulations defining "beneficial ownership of an account" for purposes of Section 5318A and subsections (i) and (j) of Section 5318 of the Bank Secrecy Act. I would like to offer some guidance to the Secretary of the Treasury concerning the Secretary's determination of "reasonable" and "practicable" steps for domestic financial institutions to ascertain the "beneficial ownership" of certain accounts as provided in Section 311 of the bill.

Section 311 of this legislation authorizes the Secretary of the Treasury to require domestic financial institutions and agencies to take one or more of five "special measures" if the Secretary of the Treasury finds that reasonable grounds exist to conclude that a foreign jurisdiction, a financial institution operating outside the United States, a class of international transactions, and/or types of accounts is of "primary money laundering concern."

The second measure would require domestic financial institutions to take such steps as the Secretary determines to be "reasonable" and "practicable" to ascertain beneficial ownership of accounts opened or maintained in the

United States by a foreign person, excluding publicly traded foreign corporations, associated with what has been determined to be a primary money laundering concern.

In both Section 5318A(b)(1)(B)(iii) and (b)(2), the Secretary is given the authority to require steps the Secretary determines to be "reasonable and practicable" to identify the "beneficial ownership" of funds or accounts. Neither the phrase "beneficial ownership" nor the phrase "reasonable and practicable steps" is defined in the legislation, and there is no single accepted statutory or common-law meaning of either phrase that the legislation is meant to incorporate.

During the 106th Congress, the issue was dealt with by the House Banking Committee, which favorably reported H.R. 3886, which contained provisions nearly identical to those contained in Section 311 of H.R. 3162, but without the mandatory rulemaking requirement which my amendment added this year. Both in the 106th Congress and again this year, the concern has been expressed that this lack of statutory definition conceivably could result in a rule or order under either Section 5318A(b)(1)(B)(iii) or (b)(2) that requires financial institutions to identify all beneficial owners of funds or of an account, which in turn might result in some circumstances in clearly excessive and unjustifiable burdens. As the author of the amendment requiring the Secretary to undertake rulemaking in this area, I am sensitive to this concern, and I would expect the Secretary to address it when implementing this act, including when making determinations under the following provisions: (1) Section 5318A(a)(3)(B)(ii), which requires the Secretary to consider, in selecting which special measure to take, "whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;" and (2) those above-referenced provisions that permit only those steps that the Secretary determines to be "reasonable and practicable" to identify the beneficial ownership of accounts or funds, which provisions impose an enforceable constraint on the substance of any rule or order under either Section 5318A(b)(1)(B)(iii) or (b)(2).

In addition, Section 5318A(e)(3) requires the Secretary to "promulgate regulations defining beneficial ownership of an account" for purposes of Section 5318A and subsections (i) and (j) of Section 5318. This is the Bennett amendment. Section 5318A(e)(4) gives the Secretary the authority, *inter alia*, to "define . . . terms for the purposes of" Section 5318A "by regulation." I would strongly encourage the Secretary to define the meaning of the

phrases "beneficial ownership" as well as "reasonable and practicable steps" for the purposes of Sections 5318A(b)(1)(B)(iii) and (b)(2), through formal rulemaking subject to notice and comment, taking due consideration of the potential impact of such regulations on smaller institutions, and on all institutions, with an eye toward balancing regulatory burden, legitimate privacy interests, and the ability of United States financial institutions to compete globally. To the extent the Secretary opts for informal guidance on "reasonable and practicable steps," I would urge informal consultation with interested parties.

Specifically, I would note that several agencies have issued regulations or supervisory guidance defining the term "beneficial owner" or outlining what constitutes reasonable steps to obtain beneficial ownership information, in each instance for the issuing agency's own purposes. See, e.g., 17 C.F.R. §228.403; 26 C.F.R. §1.1441-1(c)(6); 28 C.F.R. §9.2(e); Letter re: Public Securities Association (Sept. 29, 1995) (SEC staff "no action" letter addressing 17 C.F.R. §240.10b-10); Guidance on Sound Risk Management Practices Governing Private Banking Activities, prepared by the Federal Reserve Bank of New York (July 1997); and Office of the Comptroller of the Currency Bank Secrecy Act Handbook (September 1996). These sources may be instructive for the Secretary in providing definitions of the phrases "beneficial ownership" and "reasonable and practicable steps."

#### ADDITIONAL STATEMENTS

##### IN MEMORY OF STANLEY FOSTER

• Mrs. BOXER. Mr. President, I would like to take this moment to reflect on the life of my friend and well-known philanthropist, Stanley Foster.

Stan died of cancer on November 14, 2001 in San Diego, CA, at the age of 74. His death represents a great loss for the people of San Diego, the State of California and the Nation, who benefitted immensely from his extraordinary dedication and commitment to his community. His strong passion to make a difference, particularly reflected in his work to prevent gun violence, has made a lasting impact on all our lives.

Stan Foster was the son of a scrap-dealer from Ukraine. After graduating from the University of Washington, he owned a retail furniture store in Portland before settling in San Diego in 1954.

A man from humble beginnings, Stan gradually rose to become a successful businessman as the owner of the popular Hang Ten sportswear label. Throughout his career, he took great pride in reinvesting in the community.

He was actively involved in organizations including the Chamber of Commerce, the United Way, the Jewish Federation and the Combined Arts Council. He also played a significant role in the political sphere, earning respect and admiration from legislators on both sides of the aisle. But he is most well known for his unwavering commitment to the fight against gun violence.

In the 1980s, Stan sold the Hang Ten company and shifted his priorities towards his civic work. Affected by an incident that occurred in his teenage life, Stan dedicated much of his time to help combat gun violence. In pursuit of this mission, he founded San Diegans Against Handgun Violence in 1988 and also became national vice chairman of Handgun Control, Incorporated. As a leader of San Diegans Against Handgun Violence, he fought for gun safety and tougher gun laws. He was a true national leader in this fight.

I will miss Stan Foster. He enriched many lives in California and throughout our Nation. Although we mourn the loss of a great leader, we will always remember his powerful voice for justice. His generosity and compassion will remain in our hearts, inspiring us to follow his unforgettable legacy. •

##### COMCAST CARES DAY AT ANACOSTIA SENIOR HIGH SCHOOL

• Mr. BIDEN. Mr. President, on October 13, 2001, as part of Comcast's nationwide Day of Service, and in conjunction with Greater DC Cares, several hundred Comcast employees from the Washington, DC area volunteered to clean, landscape, and paint Anacostia Senior High School. In the wake of the tragedy of September 11, the Comcast Foundation has contributed \$100 to disaster relief efforts in New York City and at the Pentagon for every employee and family member who participated in the clean-up. Comcast and every participating employee should be commended for their outstanding dedication and commitment to improving their community.

Nationwide, more than five thousand Comcast employees from twenty-six States volunteered their time on Comcast Cares Day. Though it may have been the work of only one corporation and one group of employees, Comcast's community service and the volunteer spirit of its employees represents the best of America.

The best of America can also be seen in other places around our country. Since September 11, Americans have risen to the occasion to aid their fellow citizen. In every city and town across America, individuals have taken the lead in community efforts like the one at Anacostia Senior High School. In my home State of Delaware, corporations such as Daimler-Chrysler, MBNA Bank and the DuPont Corporation have

lent a helping hand to assist those in need. Furthermore, fire companies, school children, and individuals from all walks of life have come together providing assistance and comfort to the victims of the horrible September 11 attack.

Not to overstate the case, but there seems to be a renewed spirit of community in America where, not long ago, we seemed more divided by differences than united by common concerns and shared values. Corporations like Comcast and their employees have heard the call. They have pulled together and responded where there is a need and, in the District of Columbia, Anacostia Senior High School was the place. It was not the work that was done there on October 13, or the time and sweat of all those who volunteered, that should inspire us the most, but the overriding sense that all of us working together can make a difference in our communities.

After the tragedy of September 11, Americans responded when we saw the courage and dedication of New York police, firemen, and emergency workers. From their example have come story after story of corporations like Comcast reaching out, taking a lead in their communities, and making a difference. Comcast, The Comcast Foundation, and the dedicated employees who participated in making a difference at Anacostia Senior High School should be commended by all of us in the United States Senate who know how much we can accomplish when we work together.

Yet, this sense of corporate responsibility is not new for the Comcast Corporation. Comcast always has been an active participant in the communities it serves. Whether it is their support of the Boys and Girls Clubs of America, the Red Cross, or the Easter Seals, Comcast has insisted on excellence not only in all aspects of its operation, but in its record of public service. This is a testament to the leadership of its founder and Chairman, Ralph Roberts, President, Brian Roberts, and Vice President, Joe Waz. These men serve as role-models in their communities and are true heroes in every sense of the word.

If we learned anything from September 11 it was that the will and resolve of the American people cannot be shaken by those who would use terror as a weapon and religion as a shield. We are strongest and at our best when we are defending American values and the bedrock principles of democracy. If anything changed on September 11 it was a renewed determination for all of us to reach out where and when we can, and to recognize that we are much more united by our common concerns and shared values than divided by our individual differences. Companies like Comcast have recognized a community